Supreme Court, U.S.
FILED
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No. 02 415

IN THE

Supreme Court of the United States

GAVINO MEDINA VIRGEN,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE CENTRAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Is 21 U.S.C. § 841 constitutional?

PARTIES TO THE PROCEEDING

Petitioner is Gavino Medina Virgen. Petitioner was the defendant in the case of *United States of America v. Luis Bedoy and Gavino Medina Virgen* in the United States District Court, Central District of California, and the appellant in United States Court of Appeals, for the Ninth Circuit.

Respondent is the United States of American. Respondent was the plaintiff in the United States District Court, Central District of California case and the appellee in the United States Court of Appeal for the Ninth Circuit.

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PETITION FOR WRIT CERTIORARI

Petitioner Gavino Medina Virgen respectfully prays that a writ of certiorari issue to review the decision of the Ninth Circuit of the United States Court of Appeals dated June 19, 2002. The Ninth Circuit of the United States Court of Appeals affirmed the decision of the United States District Court, Central District, and found 21 U.S.C. § 841 constitutional.

OPINIONS AND ORDERS BELOW

The June 19, 2002, opinion of the United States Court of Appeals, Ninth Circuit, is attached hereto as Appendix A.

A copy of the Plea Agreement for Defendant Gavino Medina Virgen, dated April 3, 2001, is attached hereto as Appendix B.

JURISDICTION OF THIS COURT

This petition for a writ of certiorari seeks review of the decision by the United States Court of Appeals, Ninth Circuit, that 21 U.S.C. § 841 is constitutional.

STATUTORY PROVISIONS INVOLVED

21 U.S.C. § 841:
(a) Unlawful acts

Except as authorized by this subchapter,

it shall be unlawful for any person knowingly or intentionally -

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a counterfeit substance.

(b) Penalties

Except as otherwise provided in section 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving -

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of herion;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of -

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgomine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N[1-(2-phenylethyl)-4-piperidinyl] propanamide or100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marijuana, or 1000 or more marijuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment

and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a find not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after two or more prior convictions for a felony drug offense h ave become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, that court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving -

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of -

(I) coca leaves, except coca leaves

and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its derivatives, their salts, isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) and (III);

(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenlethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana, or 100 or more marijuana plants regardless of weight;

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall not be less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $2,000,000 if the defendants is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a find not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a terms of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision or law, the court

shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

I.

STATEMENT OF ISSUES ON APPEAL

Is 21 U.S.C. §841(b)(1)(A) & (B), under which the appellant was sentenced, unconstitutional.

II.
STATEMENT OF THE CASE

On April 20, 1999 an Indictment was filed charging Appellant with a violation of 21 U.S.C. §846; Conspiracy to Distribute Methamphetamine; 21 U.S.C.§841 (a) : Distribution of Methamphetamine.

On April 3, 2001 Appellant entered a plea agreement agreeing to plead guilty to count two of said indictment, Distribution of Methamphetamine in violation of 21 U.S.C. and on July 2, 2001 Appellant entered a plea to that count in open court before the Honorable William J. Rae in accordance with said plea agreement.

III.
STATEMENT OF FACTS

In the sentencing agreement the appellant and

U.S. Attorney's office agree and stipulated to the following facts:

a. On October 19, 1998, in San Bernardino County, within the Central District of California, Appellant knowingly and intentionally distributed approximately 73.9 grams of a mixture or substance containing a detectable amount of methamphetamine,

b. On October 8, 1998, a co defendant one Luis Bedoy and another met with a DEA informant and discussed conducting future methamphetamine transactions.

c. On October 16, Bedoy told the confidential informant that he would send "some of his people to deliver one pound of methamphetamine in return fo $5,500. and

d. On October 190, 1998, Appellant and Bedoy sold the confidential informant approximately 461.7 grams of a mixture or substance containing 73.9 grams of pure methamphetamine in exchange for $5300

The Court at the sentencing level rated the offense level at a 20 or below with a criminal history record of three. However because of the mandatory minimum under 21 U.S.C. §841 sentenced the Appellant to 10 years.

IV.
ARGUMENT

Facts that cause enhancement of Sentences in §841(a)(1)(b) should meet the "beyond a reasonable doubt" test and not the "preponderance of the evidence" test.

The United States Supreme Court in the matter of *Apprendi v. New Jersey*, 530 U.S. 466, said the issue was whether the Due Process Clause of the Fourteenth Amendment requires authorizing an increase in the maximum prison sentence for an offense must be found by a jury beyond a reasonable doubt. In an earlier case, *Jones v. United States*, 526 U.S. 227, 242-352 (1999) the Supreme Court acknowledged the possible constitutional problem of a statute that would allow an increased penalty based on a fact found by a judge by a preponderance of the evidence. The Court avoided the issue by construing the statute in question (18 U.S.C. §2119) as establishing a separate offense rather than one offense with sentencing enhancements based on a judicial finding by a preponderance of the evidence. *Id.* at 235, 252. In *Apprendi*, however, the constitutional issue was "starkly presented." *Apprendi*, at page 476.

In *Apprendi*, Charles Apprendi was convicted of possession of a firearm for an unlawful purpose, a second degree offense under New Jersey law, that carried a five to ten year penalty. At sentencing, the judge enhanced the sentence to twelve years under the New Jersey "hate" crime law that allowed judges to do so, if he found by a preponderance of the evidence that "the defendant in committing crime acted with the purpose to intimidate an individual or group of individuals because of race, color, gender, handicap, religion, sexual orientation or ethnicity."

The New Jersey appellate court and the New Jersey Supreme Court affirmed Apprendi's sentence, finding that the hate crime enhancement was a tradi-

tional sentencing factor and, as such, was not an element of the offense that needed to be found by a jury beyond a reasonable doubt. *Apprendi*, 530 U.S. at 471-473.

The United States Supreme Court reversed, holding that the increase in the statutory maximum penalty violated Apprendi's right to due process and a jury trial because it removed from the jury assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. *Id.* at 490. The Court noted the long history of judges exercising discretion by taking various factors into consideration when imposing a sentence within the statutory limit. *Id.* at 481. The New Jersey statute, however, unconstitutionally permitted the judge to impose a sentence above the statutory maximum, based on a factual finding made by the judge under the preponderance of the evidence standard. *Id.* at 491. The Court thus "confirmed the opinion ... expressed in *Jones*, that "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.

In *United States v. Nordby*, 225 F.3rd 1053 (9th Cir 2000) this Court applied *Apprendi* and held that "the amount of drugs for which a defendant is sentenced under §841(b)(1) is such a fact." *Id.* at 1056. Nordby's sentence, therefore, violated *Apprendi* because the drug quantity finding was made by the judge under a less demanding standard and it increased the penalty beyond the statutory maximum allowable under the facts as found by the jury. *Id.* at 1061-1062. In *Nordby*

the Court further concluded that we could give no "construction to the statute before us that would avoid the constitutional issue raised by *Apprendi* 'because Congress' clearly intended that drug quantity be a sentencing factor, not an element of the crime under §841; the statute is not susceptible to a contrary interpretation." *Id.* at 1058.

V.
CONCLUSION

Based upon the reasoning and holdings in *Nordby, supra,* and *Apprendi, supra,* 841(a)(1)(b) is unconstitutional and therefore Appellant was improperly sentenced to the mandatory ten years.

Appellant respectfully requests that his sentence be reversed and that he be returned to the United States District Court for resentencing in conformity with the United States Constitution.

DATED: August 30, 2002.

Respectfully submitted,

EDWARD M. DALEY
Counsel for Petitioner
Gavino Medina Virgen

APPENDIX A

- APPENDIX A -

FILED
JUNE 19 2002
CATHY A. CATTERSON
CLERK, U.S. COURT OF
APPEAL

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. GAVINO MEDINA VIRGEN, Defendant-Appellant.	No. 01-50494 D.C.No. CR-99-01190-WJR-2 MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
William J. Rea, District Judge, Presiding

Submitted June 10, 2002**
Before: RYMER, T.G. NELSON, and THOMAS, Circuit Judges.

* This distribution is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.
** This panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App. P.34(a)(2).

Gavino Medina Virgen appeals the sentence imposed following his guilty plea to one count of distribution of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). Virgen's contention that *Apprendi v. New Jersey*, 530 U.S. 466 (2000), renders 21 U.S.C. § 841(b)(1)(A) & (B) unconstitutional is foreclosed by *United States v. Buckland*, 277 F.3d 1173 (9th Cir.2002) (en banc).

AFFIRMED.

APPENDIX B

APPENDIX B

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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	) No. CR-99-
Plaintiff,	)
v.	) PLEA AGREEMENT FOR
GAVINO MEDINA VIRGEN,	) DEFENDANT GAVINO
Defendant.	) MEDINA VIRGEN
	)
	)

1. This constitutes the plea agreement between Gavino Medina Virgen ("defendant") and the United States Attorney's Office for the Central District of California ("the U.S. Attorney's Office") in the above captioned case. The terms of the agreement are as follows:

PLEA

2. Defendant agrees to plead guilty to count two of the indictment in *United States v. Gavino Medina Virgen, et al.*, CR 99-389-WJR. The indictment charges defendant with Distribution of Methamphetamine, in violation of Title 21 United States Code, Section 841(a)(1).

NATURE OF THE OFFENSE

3. In order for defendant to be guilty of violating title 21, United States Code, Section 841(a)(1) as charged in the indictment, the defendant must have knowingly distributed methamphetamine, a Schedule II narcotic drug, to another person, knowing that methamphetamine was a prohibited drug. Defendant admits that defendant is, in fact, guilty of this offense as described in the indictment.

PENALTIES AND RESTITUTION

4. The statutory mandatory minimum sentence that the Court must impose for a violation of Title 21, United States Code, Section 841(a)(1) is 10 years imprisonment, a find of $4,000,000, a five-year period of supervised release, and a mandatory special assessment of $100. The statutory maximum sentence that the Court may impose for a violation of Title 21, United States Code, Section 841(a)(1), if life imprisonment, a fine of $4,000,000, a five year period of supervised, and a mandatory assessment of $100.

5. Supervised release is a period of time following imprisonment during which defendant will be subject to various restrictions and requirements. Defendant understands that if defendant violates one or more of the conditions of any supervised release

imposed, defendant may be returned to prison for all or part of the term of supervised release, which could result in defendant serving a total term of imprisonment greater than the statutory maximum stated above.

FACTUAL BASIS

6. Defendant and the U.S. Attorney's Office agree and stipulate to the following statement of facts:

a. On October 19, 1998, in San Bernardino County, within the Central District of California, defendant Gavino Medina Virgen knowingly and intentionally distributed approximately 73.9 grams of a mixture or substance containing a detectable amount of methamphetamine, a Schedule II narcotic drug controlled substance.

b. On October 8, 1998, co-defendant Luis Bedoy and an unidentified co-conspirator met with a confidential informant working for the Drug Enforcement Administration ("DEA") and discussesd conducting future methamphetamine transactions.

c. On October 16, 1998, co-defendant Luis Bedoy told the confidential informant that he would send "some of his people" to deliver one pound of methamphetamine in return for $5,500.

d. On October 19, 1998, defendant Luis Bedoy and Gavino Medina Virgen sold the confidential informant approximately 461.7 grams of a mixture or substance containing 73.9 grams of pure amphetamine in exchange for $5,300.

SENTENCING FACTORS

7. Defendant understands that the Court is required to consider any applicable sentencing

guidelines but may depart from those guidelines under some circumstances.

8. Defendant and the U.S. Attorney's Office agree and stipulate to the following applicable sentencing guideline factors:

Base Offense Level	: +26	[U.S.S.G. § 2D1.1(7)]
Minor Role	: - 3	[U.S.S.G. § 3B1.2]
	23	

Defendant and the U.S. Attorney's Office reserve the right to argue that additional specific offense characteristics, adjustments and departures are appropriate.

9. There is no agreement as to defendant's criminal history or criminal history category.

10. Defendant understands that neither the United States Probation Office nor the Court is bound by any stipulation in this agreement, and that the Court, with the aid of the pre-sentence report, will determine the facts and calculations relevant to sentencing. Both defendant and the U.S. Attorney's Office are free to supplement the facts stipulated to in this agreement by supplying relevant information to the United States Probation Office and the Court, and to correct any and all factual misstatements relating to the calculation of the sentence. Defendant understands that if the Court finds facts or reaches conclusions different from those in any stipulation contained in this agreement, defendant cannot, for that reason alone, withdraw defendant's guilty plea. In the event that the Court's sentencing calculations are different than those set forth in paragraph 7 above, each party agrees to maintain its view on appeal or collateral review that the calculations in paragraph 8 are consistent with the facts

of this case, but reserves the right to argue on appeal and collateral review that the Court's calculations are not error.

CONSIDERATION BY THE U.S. ATTORNEY'S OFFICE

1. In exchange for defendant's guilty plea to the indictment and the complete fulfillment of all defendant's obligations under this agreement, the U.S. Attorney's Office agrees to the following, in addition to the sentencing factors stipulation set forth above:

(a) To recommend a two-level reduction in the applicable sentencing guideline offense level, pursuant of the United States Sentencing Guideline §3E1.1, provided that defendant demonstrates an acceptance of responsibility for the offense up to and including the time of sentencing.

(b) To recommend an additional one-level reduction in the applicable sentencing guideline offense level for acceptance of responsibility pursuant to United States Sentencing Guideline §3E1.1(b)(2), provided that (1) defendant's adjusted offense level is determined by the court to be level 16 or greater, and (2) defendant demonstrates an acceptance of responsibility for the offense up to and including the time of sentencing.

WAIVER OF CONSTITUTIONAL RIGHTS

12. By pleading guilty, defendant gives up the right to persist in a plea of not guilty and the right to a speedy and public trial by jury. At any trial, whether by jury or by the Court, defendant would have the following rights, which defendant now gives up:

a. The right to the assistance of counsel, including, if defendant could not afford an attorney, the

right to have the Court appoint one to represent defendant.

b. The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

c. The right to confront and cross-examine witnesses against defendant.

d. The right, if defendant wished, to testify on defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.

e. The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

By pleading guilty, defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

LIMITED MUTUAL WAIVER OF APPEAL

13. Defendant understands that the law gives defendants the right to appeal sentences imposed under the Sentencing Guidelines. Acknowledging this , defendant gives up the right to appeal any sentence imposed and the manner in which the sentence is determined, including any order of restitution, provided that (1) the sentence is within the statutory maximum specified by law, (2) the Court does not depart upward in offense level or criminal history category, and (3) the Court determines the total offense level is 20 or below.

14. The U.S. Attorney's Office agrees to give

up its right to appeal the sentence imposed by the court and the manner in which the sentence is determined, provided that (1) the Court does not depart downward in offense level or criminal history category, and (3) the Court determines that the total offense level is 26 or above.

15. Defendant agrees that if, at or before the time of sentencing, defendant believes that the U.S. Attorney's Office has acted in violation of this agreement in any way, defendant will make that claim at or before the time of sentencing. If defendant does not object at or before the time of sentencing, defendant gives up any right to later make that claim in challenging the conviction or sentence on appeal or collateral attack (except in a collateral attack raising a claim of ineffective assistance of counsel).

PARTIES TO AGREEMENT

16. Defendant understands that the Court is not a party to this agreement and is under no obligation to accept any recommendation by the U.S. Attorney's Office or the parties regarding the sentence to be imposed. Defendant further understands that even if the Court ignores such a recommendation and/or imposes any sentence up the maximum established by statute, defendant cannot., for that reason, withdraw defendant's guilty plea, and defendant will remain bound to fulfill all defendant's obligations under this agreement. Defendant understands that no one - not the prosecutor, defendant's attorney, or the Court - can make a binding prediction or promise regarding the sentence defendant will receive, except that it will be within the statutory maximum.

17. This agreement is limited to the U.S.

Attorney's Office and cannot bind any other federal state or local prosecuting, administrative or regulatory authorities. This agreement applies only to crimes committed by defendant. This agreement does not apply to any forfeiture proceedings, and shall not preclude any past, present, or future forfeiture actions.

NO ADDITIONAL AGREEMENTS

18. Except as set forth herein, there are no promises, understandings or agreements between the government and defendant or defendant's counsel. Nor may any additional agreement, understanding or condition be entered into unless in a writing signed by all parties or on the record in court.

If a fully executed copy of this agreement is not returned to the U.S. Attorney's Office by 5:00 p.m. on November 3, 2000, this agreement will be automatically withdrawn and thereafter of no legal effect or force.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ALEJANDRO N. MAYORKAS
United States Attorney

Duncan DeVille
DUNCAN N. DEVILLE
Assistant United States Attorney

I have read this agreement and carefully discussed every part of it with my attorney. I under-

stand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

Gavino Virgen _____ 4-3-01 _____
GAVINO MEDINA VIRGEN Date
Defendant

I am Gavino Medina Virgen's attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequence of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

Fred Rivas _____ 4/3/01 _____
DAVID REED, ESQ. Date
Counsel for Defendant
Gavino Medina Virgen

I, ARTHUR T. TAFOLLA, am fluent in written and spoken English and Spanish languages. I accurately translated this entire agreement from English into

Spanish to defendant Gavino Medina Virgen on this date.

Arthur T. Tafolla 4/3/01
Interpreter